

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAJ CHRISTOPHER GUPTA,

Petitioner,

2:02-cv-1421-GEB-JFM-P

vs.

EDWARD ALAMEIDA, et al.,

Respondents.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's October 25, 2005 dismissal of his application for a writ of habeas corpus as moot. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

Where, as here, the petition was dismissed on procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it

1 debatable whether the district court was correct in its procedural ruling'; and (2) 'that jurists of
2 reason would find it debatable whether the petition states a valid claim of the denial of a
3 constitutional right.'" Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
4 McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)).

5 After careful review of the entire record herein, this court finds that petitioner has
6 not satisfied the first requirement for issuance of a certificate of appealability in this case.
7 Specifically, there is no showing that jurists of reason would find it debatable whether the instant
8 action is moot. Accordingly, a certificate of appealability should not issue in this action.

9 IT IS SO ORDERED.

10 Dated: May 1, 2006

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12 /s/ Garland E. Burrell, Jr.
13 GARLAND E. BURRELL, JR.
14 United States District Judge
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